

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARKER TIKSON,

Plaintiff,

v.

AMICA MUTUAL INSURANCE
COMPANY,

Defendant.

CASE NO. 2:23-cv-01464-TL

ORDER ON MOTION TO DISMISS
OR TRANSFER

This case involves a dispute between Plaintiff Parker Tikson and his car insurance provider Defendant Amica Mutual Insurance Company (“Amica”). The matter is before the Court on Defendant’s Motion to Dismiss. Dkt. No. 7. Having considered the submissions of the Parties, including Mr. Tikson’s response (Dkt. No. 15), and Amica’s reply (Dkt. No. 17), the Court DENIES Defendant’s motion without prejudice and STAYS all proceedings in this case.

I. BACKGROUND

On October 29, 2017, Mr. Tikson was in a car accident in King County, Washington, with an underinsured motorist. Dkt. No. 15 at 2. A dispute then arose between Mr. Tikson and

1 Amica regarding the amount of coverage he was due per the Uninsured Motorist (“UIM”)
2 provision of his insurance policy. *Id.* at 2–3. That dispute ultimately led Mr. Tikson to file a
3 complaint against Amica in King County Superior Court for compensatory damages under the
4 UIM policy, which Amica removed to the District Court for the Western District of Washington.
5 *See Tikson v. Amica Mutual Insurance Company* (“*Tikson I*”), No. C21-1584, Dkt. No. 1 (W.D.
6 Wash. Nov. 23, 2021).¹ The Parties agreed to pursue binding arbitration pursuant to the terms
7 and conditions of the insurance policy and stipulated to the dismissal of *Tikson I* without
8 prejudice. Dkt. No. 15 at 2; *see also Tikson I*, No. C21-1584, Dkt. Nos. 14–15.

9 On January 25, 2023, the Parties arbitrated the UIM claim with retired King County
10 Superior Court Judge Paris K. Kallas. Dkt. No. 15 at 4. Judge Kallas determined that Mr.
11 Tikson’s damages and losses totaled \$468,006.40. *Id.* at 4. On March 15, 2023, Mr. Tikson
12 responded to Amica’s request for payment information by offering to release Amica from an
13 insurance bad faith claim if Amica would pay the full amount of damages determined in
14 arbitration within 15 days. *Id.* at 5. Amica instead sent Mr. Tikson a check in the amount of
15 \$195,000 with a letter stating that it had a different view of the matter. *Id.*

16 On July 7, 2023, Amica filed a complaint for declaratory judgement in the United States
17 District Court for the Northern District of Illinois asking the court to find that it had satisfied its
18 contractual obligations under Mr. Tikson’s insurance policy by paying him \$195,000. *Id.* at 4;
19 *see also Amica Mutual Insur. Co. v. Tikson* (“*Amica I*”), No. C23-4365, Dkt. No. 1 (N.D. Ill.
20 Jul. 7, 2023). Mr. Tikson has since moved to dismiss that case for lack of personal jurisdiction.
21 Dkt. No. 15 at 5–6; *see also Amica I*, C23-4365, Dkt. No. 16. That motion is still pending.

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24 ¹ The Court generally takes judicial notice of all filings in the two related cases referenced throughout the Parties’
briefing and this Order pursuant to Federal Rule of Evidence 201(b)(2).

On August 22, 2023, Mr. Tikson sent a notice pursuant to Washington State’s Insurance Fair Conduct Act (“IFCA”) to the Washington State Office of the Insurance Commissioner and Amica, a statutory prerequisite to filing an insurance bad faith claim in Washington. Dkt. No. 15 at 5; *see also* RCW 48.30.015(8)(a). On September 19, 2023, Mr. Tikson filed this matter raising claims of breach of contract, insurance bad faith under IFCA, and violations of Washington’s Consumer Protection Act (“CPA”). Dkt. No. 7 at 4; *see also* Dkt. No. 1 ¶¶ 5.2–8.9. Amica now moves to dismiss, or in the alternative, to have the case transferred to the Northern District of Illinois. Dkt. No. 7. Mr. Tikson opposes dismissal and transfer. Dkt. No. 15. Amica replies to Mr. Tikson’s opposition by offering a third alternative, requesting the Court stay proceedings in this case until the personal jurisdiction issue is resolved in *Amica I*. Dkt. No. 17.

II. LEGAL STANDARDS

Amica raises two primary arguments in its motion to dismiss: (1) that Mr. Tikson was required to raise his instant claims as compulsory counterclaims in *Amica I* and is thusly barred from asserting them here per Federal Rule of Civil Procedure 13(a); or, in the alternative, (2) that the Court should apply the “first-to-file” rule to either dismiss, transfer, or stay the instant case in the interest of judicial efficiency, arguing specifically for transferring the case to the Northern District of Illinois pursuant to 28 U.S.C. § 1404(a). Dkt. No. 7 at 5–10; Dkt. No. 17 at 2–3.

A. Rule 13 Compulsory Counterclaims

The defendant in a civil suit must assert counterclaims arising out of the same “transaction or occurrence” as the claims in the underlying suit or risk being barred by res judicata from asserting the claims in a future action. Fed. R. Civ. P. 13(a); *see also Mitchell v. CB Richard Ellis Long Term Disability Plan*, 611 F.3d 1192, 1201 (9th Cir. 2010). There are two compulsory counterclaim exceptions: (1) if the claim was already the subject of a pending action, or (2) if “the opposing party sued on its claim by attachment or other process that did not

1 establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any
 2 counterclaim under this rule.” Fed. R. Civ. P. 13(a)(2)(A)–(B).

3 **B. Transfer Under 28 U.S.C. § 1404(a)**

4 Under 28 U.S.C. § 1404(a), a district court has discretion to adjudicate transfer motions
 5 on a case-by-case consideration of convenience and fairness. *Jones v. GNC Franchising, Inc.*,
 6 211 F.3d 495, 498–99 (9th Cir. 2000). The Ninth Circuit has enumerated eight factors to
 7 consider in determining whether transfer is appropriate:

- 8 (1) the location where the relevant agreements were negotiated and
 9 executed, (2) the state that is most familiar with the governing law,
 10 (3) the plaintiff's choice of forum, (4) the respective parties' contacts
 11 with the forum, (5) the contacts relating to the plaintiff's cause of
 12 action in the chosen forum, (6) the differences in the costs of
 litigation in the two forums, (7) the availability of compulsory
 process to compel attendance of unwilling non-party witnesses, and
 (8) the ease of access to sources of proof.

13 *Id.* A court must also consider the presence of any forum selection clause and the relevant public
 14 policy of the forum state, if any. *Id.*

15 **C. First-to-file Rule**

16 There is a “generally recognized doctrine of federal comity” which has judicially
 17 developed over time known as the “first-to-file” rule. *See Pacesetter Sys., Inc. v. Medtronic, Inc.*,
 18 678 F.2d 93, 94–95 (9th Cir. 1982). When separate cases involving the same parties and issues
 19 have been filed in two different districts, the second district court has discretion to transfer, stay,
 20 or dismiss the later filed case in the interest of efficiency and judicial economy. *Cedars-Sinai*
 21 *Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997). There are three prerequisite conditions
 22 for the first-to-file rule to apply: (1) the chronology of the two actions; (2) the similarity of the
 23 parties; and (3) the similarity of the issues. *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d
 24 622, 625 (9th Cir. 1991). However, this rule is not absolute. Even when the three threshold

1 factors are met, a court may dispense with the rule “for reasons of equity,” such as when the
2 first-filed case is brought in bad faith, as an anticipatory suit, or as the result of forum shopping.
3 *Id.* at 625–26. The Ninth Circuit recognizes that in deciding first-to-file issues courts should
4 maintain flexibility and discretion. *Id.* at 627–28. “Circumstances and modern judicial reality
5 []may demand that [a district court] follow a different approach from time to time.” *Church of*
6 *Scientology of California v. U.S. Dep’t of Army*, 611 F.2d 738, 750 (9th Cir. 1979), *overruled on*
7 *other grounds by Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987 (9th Cir.
8 2016).

9 III. DISCUSSION

10 Amica moves to dismiss on Rule 13 grounds because the claims alleged by Mr. Tikson
11 arise out of the same transaction or occurrence that is the subject of the earlier-filed action it
12 initiated in Illinois. Dkt. No. 7. Alternatively, Amica argues that this matter should be transferred
13 to the United States District Court for the Northern District of Illinois under 28 U.S.C. § 1404(a)
14 “for the convenience of the parties and witnesses, in the interest of justice.” *Id.* at 8. Amica
15 argues that the application of the factor-balancing test weighs in favor of transferring the case.²
16 *Id.* at 9. Amica also argues that the first-to-file rule should apply to this matter because Amica
17 filed their declaratory action before Mr. Tikson noted his IFCA complaint and initiated this
18 matter. *Id.* at 8.

19 Mr. Tikson asks this Court to deny Amica’s motion to dismiss because the Illinois court
20 does not have personal jurisdiction over him as a non-resident defendant. Dkt. No 15 at 7.

21 Mr. Tikson also argues that the 28 U.S.C. § 1404(a) factor-balancing test weighs in favor of
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24 ² The Court notes here, and throughout this order, that Amica does not address all of the relevant factors.

1 denying the motion to transfer.³ *Id.* at 9–10.

2 **A. Rule 13**

3 The Court cannot find that Mr. Tikson’s claims are barred by Rule 13 at this juncture. As
4 an initial matter, the Parties do not appear to contest whether Mr. Tikson’s claims meet the
5 “same transaction or occurrence” requirement. *Compare* Dkt. No. 7 at 6–7 (raising the argument)
6 *with generally* Dkt. No. 15 (failing to address the issue). Nevertheless, Rule 13 provides an
7 exception that might act to save Mr. Tikson’s claims in any event, should the Illinois court rule
8 in his favor on his motion to dismiss for lack of personal jurisdiction.

9 The second exception to Rule 13’s compulsory counterclaim requirement includes two
10 elements: (1) that “the opposing party sued on its claim by attachment *or other process* that did
11 not establish personal jurisdiction over the pleader on that claim,” and (2) that the pleader had
12 not yet raised any other counterclaim in the action. Fed. R. Civ. P. 13(b)(2) (emphasis added).
13 Here, Mr. Tikson has not yet answered the complaint in *Amica I*, and therefore has not yet raised
14 any other counterclaims in that action. Instead, Mr. Tikson has moved to dismiss that action on
15 personal jurisdiction grounds.⁴ Thus, if his motion is successful, he will be able to show that
16 *Amica*’s service of process in that action failed to establish personal jurisdiction over him,
17 allowing for application of the Rule 13 exception to his present claims. Because the Court cannot
18 determine application of the Rule 13 exception at this time, *Amica*’s motion to dismiss on these
19 grounds is DENIED without prejudice.

22 ³ The Court notes here, and throughout this Order, that Mr. Tikson fails to directly respond to *Amica*’s first-to-file
23 arguments.

24 ⁴ Mr. Tikson spends a considerable portion of his response in opposition to the present motion arguing that the court
in *Amica I* cannot assert personal jurisdiction over him in that case. *See* Dkt. No. 15 at 6–9. Consequently, *Amica*
addresses those arguments in reply. Dkt. No. 17 at 3–7. That question is not for this Court to decide.

1 **B. 28 U.S.C. § 1404(a) Factor-Balancing Test**

2 Although Amica relies primarily on the first-to-file rule to support its alternate request to
3 transfer the case in lieu of dismissal, it notes the 28 U.S.C. § 1404(a) factors in its briefing,
4 focusing exclusively on the first factor as weighing in favor of transferring. Dkt. No. 7 at 9. In
5 response, Mr. Tikson directly addresses most of the remaining factors, arguing that the second,
6 third, fourth, sixth, seventh, and eighth factors weigh against transfer. Dkt No. 15 at 9–12.
7 Neither Party addresses the fifth or seventh factors. Therefore, the Court considers those two
8 factors as neutral for purposes of this motion. The parties also did not address any public policy
9 of the forum state, so the Court also considers that factor neutral.

10 Regarding the first factor, the location where the relevant agreements were negotiated
11 and executed, Amica highlights that the insurance policy at issue was negotiated and executed in
12 Illinois. Dkt. No. 7 at 9. Mr. Tikson does not dispute this fact. Thus, this factor weighs in favor
13 of transfer.

14 The second factor, the state most familiar with the governing law, likely weighs against
15 transfer. Mr. Tikson’s IFCA and CPA claims arise under Washington law. Dkt. No. 15 at 11.
16 Additionally, Mr. Tikson argues that this court is the most familiar with the governing law
17 because it has already invested time and resources with this case having dismissed it without
18 prejudice once before. *Id.*; *see also Tikson I*, No. C21-1584, Dkt. Nos. 14–15. Although it does
19 not address this argument to any specific transfer factor, Amica asserts that all federal courts are
20 equally qualified to adjudicate the laws of another jurisdiction fairly and competently. Dkt. No. 7
21 at 9. Given the history of this case and the issues involved, the Court finds that this factor weighs
22 against transfer.

23 The third factor considers the Plaintiff’s chosen forum; as Plaintiff, Mr. Tikson receives
24 substantial deference for his chosen forum under the test. *Decker Coal Co. v. Commonwealth*

1 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Further, Mr. Tikson argues that all the operative
2 events occurred in Washington, which is likely the most convenient forum for any relevant
3 witnesses. Dkt. No. 15 at 10–11. Amica also appears to “concede[] that Washington is an
4 appropriate alternative forum.”⁵ Dkt. No. 17 at 8. The Court therefore concludes that this factor
5 weighs against transfer.

6 The fourth factor focuses on the Parties’ respective contacts with the current and potential
7 forums. Mr. Tikson points to the fact that he is a resident of Washington state, all of his medical
8 providers are in Washington, and he has paid taxes in Washington every year since 2016. Dkt.
9 No. 15 at 12. Mr. Tikson also argues that Amica advertises and sells insurance policies in
10 Washington. *Id.* Finally, Mr. Tikson claims he has had no contacts with Illinois since his parents
11 moved in 2021. *Id.* Amica argues that Mr. Tikson availed himself of Illinois law when he entered
12 the insurance policy, and that the policy is sufficient to satisfy personal jurisdiction over him.
13 Dkt. No. 17 at 6. The Court also considers the fact that Amica has previously availed itself of
14 this Court’s jurisdiction in *Tikson I*, when it removed Mr. Tikson’s prior state court action, which
15 led to the underlying arbitration that also occurred in Washington. Thus, both parties clearly have
16 significant contacts with Washington, whereas the question of Mr. Tikson’s contacts with
17 Illinois—to the extent it goes to establishing personal jurisdiction—is still pending before the
18 court in *Amica I*. Therefore, at least at this time, this factor weighs against transfer.

19 The sixth factor concerns the cost of litigation. Courts generally disfavor transferring
20 when the transfer would merely shift, not eliminate, the cost and inconvenience. *Decker Coal*,
21 805 F.2d at 843. Mr. Tikson argues that paying for counsel in Illinois is a financial burden. Dkt.
22 15 at 12. Mr. Tikson has paid a retainer and pays hourly fees to his Illinois attorneys, and he
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24 ⁵ The Court notes that Amica was not addressing this element of the 28 U.S.C. § 1404(a) factors when it made this assertion.

1 argues that Amica has more resources and is indifferent to the cost associated with transferring
2 venue. *Id.* Amica argues that the action in Illinois likely does not require Mr. Tikson to be
3 physically available as a witness and with the advent of virtual hearings any burden on
4 Mr. Tikson would be minimal.⁶ Dkt. No. 17 at 7. Here, Mr. Tikson's arguments run counter to
5 his assertion that this factor weighs against transfer. On the contrary, should the Court deny
6 Amica's transfer request, Mr. Tikson would be required to continue prosecuting both cases
7 unless and until the court in *Amica I* rules in his favor on his pending motion to dismiss. Thus, at
8 this time, this factor weighs in favor of transfer.

9 Finally, the eighth factor, ease of access to sources of proof or evidence, focuses on the
10 location of witnesses and documentary evidence. *Jones*, 211 F.3d at 499. Mr. Tikson argues that
11 all the evidence relevant to proving damages are in Washington state and that discovery is likely
12 to focus on the conduct of Washington-based adjusters applying Washington insurance law. Dkt.
13 No. 15 at 11. *Id.* Thus, this factor weighs against transfer.

14 On balance, only two of the eight factors favor transfer, whereas four weigh against, at
15 least at this point in the proceedings considering the unresolved personal jurisdiction issue in
16 *Amica I*. The Court, therefore, in its discretion, DENIES Amica's motion for transfer under
17 28 U.S.C. § 1404(a).

18 **C. First-to-File Rule**

19 Amica's primary argument for transfer, though, arises under the so-called first-to-file
20 rule. The Court first considers three threshold factors in deciding whether the rule applies: (1) the
21 chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the
22 issues. *Alltrade*, 946 F.2d at 625. There is no dispute that Amica filed its declaratory action in
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24 ⁶ Again, the Court notes that Amica does not address these arguments to the 28 U.S.C. § 1404(a) transfer factors, but the Court nonetheless considers them here as relevant.

1 Illinois before Mr. Tikson initiated the instant matter, the two cases involve the exact same
2 parties, and that the claims in both cases arise from the same set of facts. Thus, the first-to-file
3 rule would generally favor granting Amica's requested relief.

4 Ultimately, the Court has ample discretion and may chose not to apply the rule "for
5 reasons of equity." *Alltrade*, 946 F.2d at 628. Typical equitable exceptions include bad faith,
6 anticipatory suits, and forum shopping. *Id.* Mr. Tikson does not specifically respond to Amica's
7 first-to-file arguments. *See* Dkt. No. 15. However, Mr. Tikson does allege that Amica's actions
8 could be seen as "[v]enue shopping." *Id.* at 2. Specifically, Mr. Tikson highlights that Amica had
9 previously assented to this Court's jurisdiction by removing his previous lawsuit from
10 Washington state court, never sought to transfer that case to Illinois, and only filed its out-of-
11 state declaratory action after receiving an unfavorable arbitration decision in Washington. *Id.*
12 at 2–5.

13 Other facts raise the inference that Amica intentionally teed-up this very forum selection
14 issue by anticipatorily filing its declaratory action in Illinois, despite being on notice of
15 Mr. Tikson's potential Washington-based IFCA claim. For example, Mr. Tikson offered to waive
16 his insurance bad faith claim under Washington law in exchange for a payment consistent with
17 the amount of damages determined by the arbitrator. Dkt. No. 15 at 5. In response, despite
18 having previously availed itself of this Court's jurisdiction, Amica paid what it believed to be its
19 contractual obligation and then appears to have raced to file its declaratory action in Illinois (not
20 Washington) before Mr. Tikson initiated the prerequisite administrative process for bringing his
21 IFCA claim. *Id.* at 4–5; Dkt. No. 7 at 3–4. Additionally, the convenience and availability of
22 witnesses weighs in favor of the case being heard in Washington because the accident occurred
23 in Washington, previous matters were decided in Washington, and there is no question as to this
24 Court's jurisdiction over the subject matter and parties.

1 That said, the Court recognizes that “the ‘first to file’ rule normally serves the purpose of
2 promoting efficiency well and should not be disregarded lightly.” *Church of Scientology*, 611
3 F.2d at 750. In applying the rule, the Court has “discretion to transfer, *stay*, or dismiss” the
4 potentially duplicative action. *Cedars-Sinai*, 125 F.3d at 769 (emphasis added). In this instance,
5 the Court feels the correct approach is to wait at least until the personal jurisdiction issue is
6 resolved in the earlier-filed case before deciding how to proceed in this matter. Therefore, the
7 Court DENIES Amica’s request to transfer the case per the first-to-file rule without prejudice and
8 STAYS proceedings until the court in *Amica I* renders a decision on the personal jurisdiction issue.

9 IV. CONCLUSION

10 Accordingly, the Court DENIES Defendant’s motion (Dkt. No. 7) and STAYS all
11 proceedings in this matter until the United States District Court for the Northern District of
12 Illinois enters a decision on Mr. Tikson’s pending motion to dismiss. The Parties shall file with
13 the Court a joint status report within **fourteen (14) days** of the entry of the Illinois court’s order.

14 Dated this 8th day of April 2024.

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17 Tana Lin
18 United States District Judge
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